

REMARKS

In this response, the subject matter of claims 28 and 30 have been respectively incorporated into independent claims 27 and 29, and claims 28 and 30 have been cancelled.

The rejection of claims 27-30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Choi (Proceedings of 2002 IEEE international Conference on Computer-Aided Design, pp. 732-737) in view of Miyazaki (US 2001/0,048,319), hereafter referenced as Choi and Miyazaki respectively, is respectfully traversed.

On page 5 of the Final Action, the Examiner admits that Choi and Miyazaki both fail to disclose an actual operating frequency exceeding the necessary operating frequency within an operable frequency and most close to the operating frequency. To overcome this admitted shortcoming, the Examiner indicates that even though the cited references do not teach this feature explicitly, the Examiner maintains that Choi discloses the operating frequency and it is a common sense principle to have the actual frequency within the operating frequency and have "actual frequency a little bit margin exceeding the necessary operating frequency, in order not to have the actual frequency beyond the operating frequency and have enough frequency to succeed operation in a frame interval."

Apart from arbitrarily introducing a new "principle" into this § 103 rejection, the above quoted section is syntactically unclear and leaves the Applicants in some doubt as to the examiner's actual meaning. Further, it appears that what the Examiner is doing is using a full working knowledge of the claimed subject matter to assert that extending the necessary operating frequency "just in case it was insufficient" as it were, would be obvious. However, this would seem to infer that at least the Choi arrangement without modification was apt to inoperable under certain circumstances and in need of correction. In other words, in order to establish a

rejection, Examiner improperly assumes that the Choi arrangement is, as disclosed, partially inoperable for its intended purpose.

In particular, in the motion picture encoding or decoding system of claim 27, a failure situation may occur when the necessary operation volume calculated by the necessary operation volume calculating means is smaller than an actual necessary operation volume. In order to avoid such situation, the invention includes the failure situation avoiding means for avoiding the failure situation, wherein the failure situation avoiding means increases the operation volume calculated by the necessary operation volume calculating means by a prescribed value.

In claim 29, when the necessary operation volume calculated by the necessary operation volume calculating step is smaller than an actual necessary operation volume, the failure situation avoiding step increases the operation volume calculated by the necessary operation volume calculating means by a prescribed value.

The failure situation can be avoided in the present invention is explained in paragraph 0035 of the specification. Also, the electric power consumption is minimized in the present invention is explained in paragraph 0027 of the specification.

Choi and Miyazaki do not disclose or suggest the failure situation avoiding means and the failure situation avoiding step. Also, the advantages of the invention are not disclosed or suggested by Choi and Miyazaki.

Yet another shortcoming in the rejection comes in that, on page 4 of the Final Action, the Examiner admits that Choi further fails to disclose an encoder system, but overcomes this by taking the position that an encoder is the inverse of a decoder and as such, this methodology can be (without any suggestion to do so) applied to an encoder system as well.

It is therefore asserted that these shortcomings render the

rejection untenable and as such reconsideration and allowance of the claims, as amended, is in order.

As explained above, the cited references do not disclose or suggest the features of the invention now claimed. Even if the cited references are combined, claims of the application are patentable over the cited references.

Reconsideration and allowance are earnestly solicited.

Respectfully Submitted,

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